

2SHB 1662 - S AMD 295

By Senators Swecker, Ranker, Harper

ADOPTED 04/07/2011

1  
2           Strike everything after the enacting clause and insert the  
3 following:

4  
5           "**Sec. 1.** RCW 90.58.140 and 2010 c 210 s 36 are each amended to  
6 read as follows:

7           (1) A development shall not be undertaken on the shorelines of the  
8 state unless it is consistent with the policy of this chapter and,  
9 after adoption or approval, as appropriate, the applicable guidelines,  
10 rules, or master program.

11           (2) A substantial development shall not be undertaken on  
12 shorelines of the state without first obtaining a permit from the  
13 government entity having administrative jurisdiction under this  
14 chapter.

15           A permit shall be granted:

16           (a) From June 1, 1971, until such time as an applicable master  
17 program has become effective, only when the development proposed is  
18 consistent with: (i) The policy of RCW 90.58.020; and (ii) after  
19 their adoption, the guidelines and rules of the department; and (iii)  
20 so far as can be ascertained, the master program being developed for  
21 the area;

22           (b) After adoption or approval, as appropriate, by the department  
23 of an applicable master program, only when the development proposed is  
24 consistent with the applicable master program and this chapter.

25           (3) The local government shall establish a program, consistent  
26 with rules adopted by the department, for the administration and  
27 enforcement of the permit system provided in this section. The

1 administration of the system so established shall be performed  
2 exclusively by the local government.

3 (4) Except as otherwise specifically provided in subsection (11)  
4 of this section, the local government shall require notification of  
5 the public of all applications for permits governed by any permit  
6 system established pursuant to subsection (3) of this section by  
7 ensuring that notice of the application is given by at least one of  
8 the following methods:

9 (a) Mailing of the notice to the latest recorded real property  
10 owners as shown by the records of the county assessor within at least  
11 three hundred feet of the boundary of the property upon which the  
12 substantial development is proposed;

13 (b) Posting of the notice in a conspicuous manner on the property  
14 upon which the project is to be constructed; or

15 (c) Any other manner deemed appropriate by local authorities to  
16 accomplish the objectives of reasonable notice to adjacent landowners  
17 and the public.

18 The notices shall include a statement that any person desiring to  
19 submit written comments concerning an application, or desiring to  
20 receive notification of the final decision concerning an application  
21 as expeditiously as possible after the issuance of the decision, may  
22 submit the comments or requests for decisions to the local government  
23 within thirty days of the last date the notice is to be published  
24 pursuant to this subsection. The local government shall forward, in a  
25 timely manner following the issuance of a decision, a copy of the  
26 decision to each person who submits a request for the decision.

27 If a hearing is to be held on an application, notices of such a  
28 hearing shall include a statement that any person may submit oral or  
29 written comments on an application at the hearing.

30 (5) The system shall include provisions to assure that  
31 construction pursuant to a permit will not begin or be authorized  
32 until twenty-one days from the date of receipt as provided in  
33 subsection (6) of this section; or until all review proceedings are  
34 terminated if the proceedings were initiated within twenty-one days

1 from the date of receipt as defined in subsection (6) of this section  
2 except as follows:

3 (a) (~~In the case of any permit issued to the state of Washington,~~  
4 ~~department of transportation, for the construction and modification of~~  
5 ~~SR 90 (I 90) on or adjacent to Lake Washington, the construction may~~  
6 ~~begin after thirty days from the date of filing, and the permits are~~  
7 ~~valid until December 31, 1995~~) If an appeal is filed with the  
8 shorelines hearings board, construction outside of the shoreland area  
9 may be commenced in advance of final action on the appeal if the local  
10 government makes a written finding that such work does not depend on  
11 or require the work proposed within the shoreland area and is not  
12 inconsistent with any requirements of the applicable master program.  
13 Project construction that occurs under the authority of this section  
14 is done at the proponent's risk with the project proponent being  
15 responsible for meeting the requirements of the final permit decision  
16 after appeal;

17 (b) Construction may be commenced no sooner than thirty days after  
18 the date of the appeal of the board's decision is filed if a permit is  
19 granted by the local government and (i) the granting of the permit is  
20 appealed to the shorelines hearings board within twenty-one days of  
21 the date of receipt, (ii) the hearings board approves the granting of  
22 the permit by the local government or approves a portion of the  
23 substantial development for which the local government issued the  
24 permit, and (iii) an appeal for judicial review of the hearings board  
25 decision is filed pursuant to chapter 34.05 RCW. The appellant may  
26 request, within ten days of the filing of the appeal with the court, a  
27 hearing before the court to determine whether construction pursuant to  
28 the permit approved by the hearings board or to a revised permit  
29 issued pursuant to the order of the hearings board should not  
30 commence. If, at the conclusion of the hearing, the court finds that  
31 construction pursuant to such a permit would involve a significant,  
32 irreversible damaging of the environment, the court shall prohibit the  
33 permittee from commencing the construction pursuant to the approved or  
34 revised permit until all review proceedings are final. Construction

1 pursuant to a permit revised at the direction of the hearings board  
2 may begin only on that portion of the substantial development for  
3 which the local government had originally issued the permit, and  
4 construction pursuant to such a revised permit on other portions of  
5 the substantial development may not begin until after all review  
6 proceedings are terminated. In such a hearing before the court, the  
7 burden of proving whether the construction may involve significant  
8 irreversible damage to the environment and demonstrating whether such  
9 construction would or would not be appropriate is on the appellant;

10 (c) If the permit is for a substantial development meeting the  
11 requirements of subsection (11) of this section, construction pursuant  
12 to that permit may not begin or be authorized until twenty-one days  
13 from the date of receipt as provided in subsection (6) of this  
14 section.

15 If a permittee begins construction pursuant to (~~subsections~~)  
16 (a), (b), or (c) of this subsection, the construction is begun at the  
17 permittee's own risk. If, as a result of judicial review, the courts  
18 order the removal of any portion of the construction or the  
19 restoration of any portion of the environment involved or require the  
20 alteration of any portion of a substantial development constructed  
21 pursuant to a permit, the permittee is barred from recovering damages  
22 or costs involved in adhering to such requirements from the local  
23 government that granted the permit, the hearings board, or any  
24 appellant or intervener.

25 (6) Any decision on an application for a permit under the  
26 authority of this section, whether it is an approval or a denial,  
27 shall, concurrently with the transmittal of the ruling to the  
28 applicant, be transmitted to the department and the attorney general.  
29 A petition for review of such a decision must be commenced within  
30 twenty-one days from the date of receipt of the decision. With regard  
31 to a permit other than a permit governed by subsection (10) of this  
32 section, "date of receipt" as used herein refers to the date that the  
33 applicant receives written notice from the department that the  
34 department has received the decision. With regard to a permit for a

1 variance or a conditional use, "date of receipt" means the date a  
2 local government or applicant receives the written decision of the  
3 department rendered on the permit pursuant to subsection (10) of this  
4 section. For the purposes of this subsection, the term "date of  
5 receipt" has the same meaning as provided in RCW 43.21B.001.

6 (7) Applicants for permits under this section have the burden of  
7 proving that a proposed substantial development is consistent with the  
8 criteria that must be met before a permit is granted. In any review  
9 of the granting or denial of an application for a permit as provided  
10 in RCW 90.58.180 (1) and (2), the person requesting the review has the  
11 burden of proof.

12 (8) Any permit may, after a hearing with adequate notice to the  
13 permittee and the public, be rescinded by the issuing authority upon  
14 the finding that a permittee has not complied with conditions of a  
15 permit. If the department is of the opinion that noncompliance  
16 exists, the department shall provide written notice to the local  
17 government and the permittee. If the department is of the opinion  
18 that the noncompliance continues to exist thirty days after the date  
19 of the notice, and the local government has taken no action to rescind  
20 the permit, the department may petition the hearings board for a  
21 rescission of the permit upon written notice of the petition to the  
22 local government and the permittee if the request by the department is  
23 made to the hearings board within fifteen days of the termination of  
24 the thirty-day notice to the local government.

25 (9) The holder of a certification from the governor pursuant to  
26 chapter 80.50 RCW shall not be required to obtain a permit under this  
27 section.

28 (10) Any permit for a variance or a conditional use by local  
29 government under approved master programs must be submitted to the  
30 department for its approval or disapproval.

31 (11)(a) An application for a substantial development permit for a  
32 limited utility extension or for the construction of a bulkhead or  
33 other measures to protect a single family residence and its  
34

1 appurtenant structures from shoreline erosion shall be subject to the  
2 following procedures:

3 (i) The public comment period under subsection (4) of this section  
4 shall be twenty days. The notice provided under subsection (4) of  
5 this section shall state the manner in which the public may obtain a  
6 copy of the local government decision on the application no later than  
7 two days following its issuance;

8 (ii) The local government shall issue its decision to grant or  
9 deny the permit within twenty-one days of the last day of the comment  
10 period specified in (a)(i) of this subsection; and

11 (iii) If there is an appeal of the decision to grant or deny the  
12 permit to the local government legislative authority, the appeal shall  
13 be finally determined by the legislative authority within thirty days.

14 (b) For purposes of this section, a limited utility extension  
15 means the extension of a utility service that:

16 (i) Is categorically exempt under chapter 43.21C RCW for one or  
17 more of the following: Natural gas, electricity, telephone, water, or  
18 sewer;

19 (ii) Will serve an existing use in compliance with this chapter;  
20 and

21 (iii) Will not extend more than twenty-five hundred linear feet  
22 within the shorelines of the state."

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25 By Senators Swecker, Ranker, Harper

26 ADOPTED 04/07/2011  
27 On page 1, line 2 of the title, after "act;" strike the remainder of  
28 the title and insert "and amending RCW 90.58.140."

29 EFFECT: Clarifies that if an appeal is filed with the shorelines  
hearings board, construction outside of the shoreland area may be  
commenced in advance of final action on the appeal if the local  
government makes a written finding that such work is not  
inconsistent with any requirements of the applicable master  
program. Also clarifies that project construction occurring under  
the authority of this section is done at the project proponent's  
risk.

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